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Notice of Allowability	Application No. 19/832,608 Examiner Eric F Winakur	Applicant(s) GARDNER ET AL. Art Unit	
Notice of Allowability	ric F Winakur	Art Unit	
	Eric F Winakur		
		0700	
		3736	
The MAILING DATE of this communication appear All claims being allowable, PROSECUTION ON THE MERITS IS (O herewith (or previously mailed), a Notice of Allowance (PTOL-85) or NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGI of the Office or upon petition by the applicant. See 37 CFR 1.313 and	R REMAINS) CLOSED in this ap other appropriate communication HTS. This application is subject to	plication. If not include will be mailed in due	ed course. THIS
1. A This communication is responsive to the amendment filed 16	March 2005.		٠
2. \boxtimes The allowed claim(s) is/are $\underline{1-40,54-90,103-107}$ and $\underline{110-113}$,		
3. \boxtimes The drawings filed on <u>26 July 2001</u> are accepted by the Exam	niner.		
 4. Acknowledgment is made of a claim for foreign priority under a) All b) Some* c) None of the: 1. Certified copies of the priority documents have be certified copies of the priority documents have be document international Bureau (PCT Rule 17.2(a)). * Certified copies not received: Applicant has THREE MONTHS FROM THE "MAILING DATE" of noted below. Failure to timely comply will result in ABANDONMENTHIS THREE-MONTH PERIOD IS NOT EXTENDABLE. 5. A SUBSTITUTE OATH OR DECLARATION must be submitted INFORMAL PATENT APPLICATION (PTO-152) which gives 6. CORRECTED DRAWINGS (as "replacement sheets") must be appered by the Notice of Draftspersor 1) hereto or 2) to Paper No./Mail Date (b) including changes required by the attached Examiner's APAPEN No./Mail Date Identifying indicia such as the application number (see 37 CFR 1.84 each sheet. Replacement sheet(s) should be labeled as such in the 7. DEPOSIT OF and/or INFORMATION about the deposit attached Examiner's comment regarding REQUIREMENT FOR the priority documents have be comment regarding REQUIREMENT FOR the priority documents have be described by the deposit attached Examiner's comment regarding REQUIREMENT FOR the priority documents have be completed by the deposit attached Examiner's comment regarding REQUIREMENT FOR the priority documents have be called a such in the deposit attached Examiner's comment regarding REQUIREMENT FOR the priority documents have be called a such in the deposit attached Examiner's comment regarding REQUIREMENT FOR the priority documents have be called the priority documents have be called a such in the deposit attached Examiner's comment regarding REQUIREMENT FOR the priority documents have be called the priority document have be called the priority document have be called to the priority documents have be called to the priority documents have be called to the priority document have be called the priority document have be called to the priority documents have be called to the priority	een received. een received in Application No ments have been received in this this communication to file a reply NT of this application. ed. Note the attached EXAMINER reason(s) why the oath or declara be submitted. n's Patent Drawing Review (PTO- Amendment / Comment or in the C I(c)) should be written on the drawin header according to 37 CFR 1.121(complying with the receives AMENDMENT or Nation is deficient. 948) attached Office action of the do. must be submitted. It	quirements OTICE OF
Attachment(s) 1. Notice of References Cited (PTO-892) 2. Notice of Draftperson's Patent Drawing Review (PTO-948) 3. Information Disclosure Statements (PTO-1449 or PTO/SB/08) Paper No./Mail Date 4. Examiner's Comment Regarding Requirement for Deposit of Biological Material	5. ☐ Notice of Informal F 6. ☐ Interview Summary Paper No./Mail Da 7. ☑ Examiner's Amendr 8. ☐ Examiner's Stateme 9. ☐ Other	(PTO-413), te ment/Comment	

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mark Schroeder (Reg. No. 53,566) on 16 May 2005.

Claim 60 is generic to the claims that depend therefrom and allowable. Accordingly, the restriction requirement as to the encompassed species is hereby withdrawn and claims 69 - 80, 84, and 88 - 90, directed to the species of the reference sample are no longer withdrawn from consideration since all of the claims to this species depend from or otherwise include each of the limitations of an allowed generic claim. However, claims 108 and 109, directed to alternate species of reference samples remain withdrawn from consideration since they do not depend upon or otherwise include all the limitations of an allowed generic claim as required by 37 CFR 1.141.

In view of the above noted withdrawal of the restriction requirement as to the linked species, applicant(s) are advised that if any claim(s) depending from or including all the limitations of the allowable generic linking claim(s) be presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no

longer applicable. See *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

The application has been amended as follows:

In the specification, the first sentence was updated to include information on the related applications, as follows:

This application is related to U.S. Patent Application Serial No. <u>09/832,585, now U.S. Patent No. 6,574,490</u>, entitled "System for Non-Invasive Measurement of Glucose in Humans"; U.S. Patent Application Serial No. <u>09/832,586</u>, <u>now U.S. Patent No. 6,862,091</u>, entitled "Illumination Device and Method for Spectroscopic Analysis"; and U.S. Patent Application Serial No. <u>09/832,631</u>, entitled "Encoded Variable Filter Spectrometer", all filed on the same date herewith and assigned to the assignee of the present application. The disclosure of each of these related applications is hereby incorporated by reference.

In the claims:

In claim 1, line 9, "measurement" was changed to -- reference --.

In claim 54, line 7, "measurement" was changed to -- reference --.

Claim 60 was amended as follows to include positively recited structure:

60. A reference sample for maintaining prediction performance of an optical system used to measure an analyte or attribute in a representative measurement sample, wherein the representative measurement sample comprises a bodily tissue, bodily fluid or other biological sample containing the analyte or attribute, with the

reference sample including a structure having one or more optically interactive surfaces

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and producing a non-stepwise reference spectrum that is optically similar to the

representative measurement sample, both the reference sample and the representative

measurement sample having a primary optical absorber corresponding to a dominant in

vivo optical absorber for the representative measurement sample.

In claim 69, line 1, "62" was changed to -- 61 --.

In claim 77, line 1, "55" was changed to -- 60 --.

Claims 108 and 109, drawn to an invention non-elected without traverse, were

canceled.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Eric F Winakur whose telephone number is 571/272-

4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Max Hindenburg can be reached on 571/272-4726. The fax phone number

for the organization where this application or proceeding is assigned is 703-872-9306.

Application/Control Number: 09/832,608

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Fric F Winakur Primary Examiner Art Unit 3736

19 May 2005